

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 6, 2010 Session

IN RE: THE ESTATE OF JOSEPH BRIGHTMAN COOPER, DECEASED

Appeal from the Chancery Court for Robertson County
No. 19505 Laurence M. McMillan, Jr., Chancellor

No. M2009-01290-COA-R3-CV - Filed March 9, 2010

Shirley E. Cooper filed a petition seeking an elective share and a year's support, among other things, from the estate of her deceased husband, Joseph Brightman Cooper. Jimmy B. Cooper, Sr., Executor of the Estate of Joseph Brightman Cooper ("Executor"), answered the petition and claimed that an antenuptial agreement entered into by Ms. Cooper and Joseph Brightman Cooper precluded the relief sought in Ms. Cooper's petition. After a trial, the Trial Court entered its order finding and holding, *inter alia*, that the antenuptial contract was valid and enforceable and waived any interest in property owned by the other on the date of the marriage, but that it did not defeat Ms. Cooper's claim to property acquired after the date of the marriage. Ms. Cooper appeals the judgment that the antenuptial contract was valid and enforceable. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., and RICHARD H. DINKINS, J.J., joined.

Joe M. Haynes, Goodlettsville, Tennessee, for the appellant, Shirley E. Cooper.

Philip C. Kelly, Gallatin, Tennessee, for the appellees, the Estate of Joseph Brightman Cooper and Jimmy B. Cooper, Sr., Executor.

OPINION

Background

Ms. Cooper and Joseph Brightman Cooper (“Deceased”) were married in November of 1987, and remained married until Deceased’s death in November of 2006. Prior to the marriage, Ms. Cooper and Deceased executed an Antenuptial Contract.

After Deceased’s death, Executor filed a petition to probate Deceased’s Last Will and Testament, and an order was entered admitting the will to probate. Ms. Cooper then filed her petition seeking an elective share of Deceased’s estate and a year’s support, among other things. Executor answered Ms. Cooper’s petition alleging, in part, that the Antenuptial Contract precluded the relief sought in her petition. The case proceeded to trial.

Deceased was married three times, and Ms. Cooper was Deceased’s third and final wife. Executor testified at trial that he is Deceased’s son from Deceased’s first marriage. Executor was aware prior to Deceased’s marriage to Ms. Cooper that the Antenuptial Contract was being prepared and was going to be signed by his father and Ms. Cooper. Executor testified that at the time of his father’s marriage to Ms. Cooper, Deceased owned the house and “had furniture, of course, all of the house dwellings, automobiles, truck or whatever, farm equipment, cows; basically what goes on a farm.”

Ms. Cooper testified that she was married to Deceased for eighteen years. Ms. Cooper and Deceased would have celebrated their nineteenth anniversary one week after Deceased’s death. Ms. Cooper had known Deceased for 25 or 30 years before they married, and she had lived in the same area as Deceased during that time. She testified that she and Deceased began dating in 1985 and married approximately two years later.

Ms. Cooper testified that prior to their marriage, Deceased told her that he owned “approximately 18 to 20 acres, and that’s what it shows on the tax report.” Ms. Cooper had seen the house Deceased owned before she and Deceased were married. When asked if she had ever stayed overnight at the house before they married, Ms. Cooper testified:

I was asked to come up there one time. I think [Deceased] and his [previous] wife were going to Honolulu or somewhere, and he left the children, and I came up and helped, I guess you’d call it. They were teenagers.

When asked if Deceased had told her what he owned before they entered into the Antenuptial Contract, Ms. Cooper stated: “Yes. He said that he has a house, which I could see, and 18

or 20 acres, which I knew - - I don't know. It could have been more than that or less than that. I'm not familiar with the size of things." She also stated: "He didn't really have to [tell me] because it was there visually. You could see it. There was the house. He would tell me that, yes, I have this house, 18 or 20 acres, whatever, sitting on there."

Ms. Cooper testified that the Antenuptial Contract was signed the day before she and Deceased were married. She admitted that she had read the Antenuptial Contract before she signed it. Ms. Cooper testified that the Antenuptial Contract applied to "just what he had at that time.... Well, I thought it was the property that we had at that time." Ms. Cooper did not ask any questions about the Antenuptial Contract. She admitted that she could have asked questions about the Antenuptial Contract, but she did not.

When asked if she felt that Deceased had been honest with her, Ms. Cooper stated: "I think so very much." She further stated: "I never really questioned him. And I'm sure that he would have told me. He was truthful to me." Ms. Cooper was familiar with the furnishings in the house at the time she and Deceased married. She stated: "I don't know that he had any cows. I never saw cows.... I don't think that he did, but maybe he did, but I trusted him." When asked what assets Deceased had that she did not know about at the time of the marriage, Ms. Cooper stated: "All I knew about, sir, was the house and the land. I had seen that. That's all I knew about." The following questions and answers then ensued:

Q. But what other assets were there that you didn't know about?

A. I don't know.

Q. So there may not have been any other assets; [Deceased] told you what all he had?

A. At that time, yes, sir.

After trial, the Trial Court entered its order on March 10, 2008 finding and holding, *inter alia*:

1. That under the antenuptial contract entered into by the decedent and the petitioner, Shirley E. Cooper, on November 18, 1987, the parties waived any interest in the property of the other in the event of death only in the property owned by them on the date of their marriage.

2. That the antenuptial contract entered into by the decedent and the petitioner, Shirley E. Cooper on November 18, 1987 did not defeat any claim

of the petitioner to property acquired by the decedent after the date of his marriage to her.

In its Memorandum Opinion incorporated into the March 10, 2008 order by reference, the Trial Court specifically found and held, *inter alia*:

6. At the time of their marriage, the petitioner knew that the decedent owned a home and approximately 18 to 20 acres.

7. Prior to their marriage, the decedent and petitioner talked many times about a [sic] antenuptial agreement. During these talks the decedent clearly told the petitioner that he had a house and 18 to 20 acres.

8. The petitioner candidly testified that the antenuptial agreement was not “sprung upon her” and that there had been many discussions about the antenuptial agreement.

9. The petitioner characterized the decedent as a “gentle” man, an “honest” man, and a man who would have told her truthfully anything she wanted to know.

* * *

12. At the time of the execution of the antenuptial contract, the petitioner did not know of any other property owned by the decedent other than his house and approximately 18 to 20 acres and various household furnishings.

13. There was no proof offered at trial as to any other property owned by the decedent at the time of his marriage to the petitioner other than the home and 18 to 20 acres and various household furnishings.

14. The parties’ tax returns for the years 1986 and 1987 were placed into evidence, and these tax returns showed interest income, income and expenses from beef cattle operations and depreciation taken from farming operations. However, there was no testimony given which could allow this court to conclude the nature and extent of any holdings of the decedent as of the date of his marriage to the petitioner.

The Trial Court referred the case to the Probate Master for calculation of the net estate, Ms. Cooper’s elective share of property acquired after the date of the marriage,

and a year's support, among other things. The Probate Master heard the case and entered a Final Report on Reference, which was adopted and approved by the Trial Court by order entered June 1, 2009. Ms. Cooper received approximately \$185,000 from exempt property, her elective share, a year's support, and assets that passed to her outside of the Estate. Ms. Cooper appeals the Trial Court's holding that the Antenuptial Contract is valid and enforceable.

Discussion

Although Ms. Cooper raises two issues on appeal, the dispositive issue is whether the Trial Court erred in holding that the Antenuptial Contract is valid and enforceable.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

As pertinent to this appeal, Tenn. Code Ann. § 36-3-501 provides:

36-3-501. Enforcement of antenuptial agreements. – Notwithstanding any other provision of law to the contrary, except as provided in § 36-3-502, any antenuptial or prenuptial agreement entered into by spouses concerning property owned by either spouse before the marriage that is the subject of such agreement shall be binding upon any court having jurisdiction over such spouses and/or such agreement if such agreement is determined, in the discretion of such court, to have been entered into by such spouses freely, knowledgeably and in good faith and without exertion of duress or undue influence upon either spouse. The terms of such agreement shall be enforceable by all remedies available for enforcement of contract terms.

Tenn. Code Ann. § 36-3-501 (2005).

Ms. Cooper acknowledges in her brief on appeal that “[n]o duress or undue influence was placed upon either spouse,” however, she alleges that she did not enter into the Antenuptial Contract knowledgeably.

Our Supreme Court has instructed:

As we interpret the knowledge element of the statute, the spouse seeking to enforce an antenuptial agreement must prove, by a preponderance of the evidence, either that a full and fair disclosure of the nature, extent, and value of his or her holdings was provided to the spouse seeking to avoid the agreement, or that disclosure was unnecessary because the spouse seeking to avoid the agreement had independent knowledge of the full nature, extent, and value of the proponent spouse's holdings.

* * *

The proponent has the burden of establishing the existence and terms of the agreement, as would be the situation in any other contractual setting.

Randolph v. Randolph, 937 S.W.2d 815, 821 (Tenn. 1996) (citation omitted).

This Court has addressed the issue of whether disclosure satisfies Tenn. Code Ann. § 36-3-501 and has stated:

In cases where antenuptial agreements have been enforced, we have made clear that the basic question which must be answered is whether the spouse was misled, where the proponent of the agreement makes a fair disclosure, even if not 100% exhaustive, and the spouse had the opportunity to ask questions and discover the extent of the other's holdings but failed to do so due to lack of interest, then the agreement has been held valid. *See, e.g., Cantrell v. Estate of Cantrell*, 19 S.W.3d 842 (Tenn. Ct. App. 1999); *Wilson v. Moore*, 929 S.W.2d 367 (Tenn. Ct. App. 1996); *Kahn v. Kahn*, 756 S.W.2d 685 (Tenn. 1988). *Also see, Spurlock v. Brown*, 91 Tenn. 241, 18 S.W. 868 (1892).

Reece v. Elliott, 208 S.W.3d 419, 422 (Tenn. Ct. App. 2006). We have also explained:

While some state courts have resolved the issue differently, most courts have not construed the full and fair disclosure requirement to mandate detailed disclosures such as financial statements, appraisals, balance sheets, or the like. Thus, in the absence of fraud or overreaching, the inadvertent failure to disclose an asset or the unintentional undervaluation of an asset will not invalidate a prenuptial agreement as long as the disclosure that was made provides an essentially accurate understanding of the party's financial holdings. The disclosure will be deemed adequate if it imparts an accurate understanding of the nature and extent of a person's property interests.

Wilson v. Moore, 929 S.W.2d 367, 371 (Tenn. Ct. App. 1996) (citations omitted) (footnotes omitted).

Ms. Cooper's brief on appeal argues that although she had "some independent knowledge" of Deceased's holdings, "she knew nothing about the value of the decedent's beef cattle business, farming operation, or any other assets the decedent may have owned at the time the antenuptial agreement was signed because he disclosed none of this information to Mrs. Cooper." A copy of Deceased's 1986 federal income tax return was introduced as an exhibit at trial. This exhibit shows that Deceased claimed to own beef cattle and that Deceased claimed a net loss of \$2,585 for his farm for that year. The exhibit does not show the number of beef cattle that Deceased owned, nor does it show any value for the beef cattle or for anything farm related whatsoever. The only other evidence in the record on appeal concerning cattle and farming operations was Executor's testimony that Deceased had "farm equipment, cows; basically what goes on a farm." We also note that, just as Ms. Cooper testified about the house being "there visually. You could see it," farm equipment and certainly cows likewise would be "there visually." The record is devoid of any evidence whatsoever with regard to the value of these items that Deceased may have owned.

Ms. Cooper's testimony clearly shows that she knew that Deceased owned a house with furnishings on 18 or 20 acres of land. She admitted that Deceased had told her he owned these things and that she had seen them herself. Further, Ms. Cooper's testimony shows that, despite having been married to, and having lived with Deceased for over 18 years, she is unaware of any other asset that Deceased may have owned prior to the marriage which was not disclosed to her before she signed the Antenuptial Contract. Ms. Cooper's brief on appeal asserts that "[t]he decedent could have been a secret millionaire but [Ms. Cooper] would never have known without the proper disclosure as required under the statute." While it is possible that Deceased could have been any number of things, the record does not support an assertion that Deceased failed to make a full and fair disclosure of his holdings. What we do know from the record before us, however, is that the only property owned by Deceased both at the time of the marriage and at the time of his death is the house and the 18 to 20 acres of land, property that Ms. Cooper clearly knew about. Although Ms. Cooper states that she was not aware that Deceased owned cows, the record is devoid of evidence which would tend to show that any cows, or any other undisclosed assets, that Deceased may have owned had a value so significant as to render the disclosure made by Deceased to Ms. Cooper less than full and fair. Rather, Ms. Cooper's testimony supports the Trial Court's finding that Deceased made a full and fair disclosure of his holdings.

Ms. Cooper's testimony that she apparently never discovered during those 18 plus years of being married to and living with Deceased any asset which Deceased had failed to disclose before Ms. Cooper signed the Antenuptial Contract is supportive of the Trial

Court's findings. The fact that Ms. Cooper apparently never discovered during the marriage any substantial undisclosed assets owned by Deceased prior to the marriage, especially given Ms. Cooper's own testimony that Deceased, was "truthful to me," supports the Trial Court's finding that there were no substantial undisclosed assets in existence. Rather, the record reveals that Ms. Cooper had "an accurate understanding of the nature and extent of [Deceased's] property interests" at the time she signed the Antenuptial Contract. *Wilson*, 929 S.W.2d at 371. Ms. Cooper herself testified that Deceased was honest with her and that she had the opportunity to ask questions about his holdings, but she chose not to do so.

The Trial Court found that Ms. Cooper had entered into the Antenuptial Contract knowledgeably. The evidence in the record on appeal does not preponderate against this finding. We, therefore, affirm the Trial Court's final judgment entered on June 1, 2009.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Shirley E. Cooper, and her surety.

D. MICHAEL SWINEY, JUDGE